

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**JAMES HARLAN LYNN,**

**Petitioner,**

**v.**

**SR GRANT,**

**Respondent.**

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**Case No. CIV-21-888-D**

**REPORT AND RECOMMENDATION**

Petitioner, a prisoner appearing pro se, has filed a Petition for Writ of Habeas Corpus, (ECF No. 1). Chief United States District Judge Timothy D. DeGiusti has referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). In accordance with that referral, the undersigned magistrate judge reviewed the pleadings filed by Petitioner and entered an Order (ECF No. 4), notifying Petitioner that he must either pay the \$5.00 filing fee or be granted leave to proceed without prepayment of fees. The Petitioner was ordered to cure this deficiency by September 30 , 2021. Petitioner was further advised that if the deficiency was not cured, the undersigned would recommend dismissal of the action without prejudice and without further notice.

A review of the civil docket for this case indicates that as of this date, the Petitioner has failed to cure the deficiencies, show good cause for his failure to do so, or request an extension of time to comply with the Court's order. In fact, Petitioner

has not responded to the Court's order in any way. Further, there is no indication from the docket that Petitioner did not receive the Court's previous Order which was mailed to Petitioner's address of record. *Id.* and Staff Notes dated 09/13/2021; LCvR 5.4.(a).

The undersigned finds that Petitioner's failure to comply with the Court's Order, in light of the Court's right and responsibility to manage its cases, warrants dismissal of this action without prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n.2, 1162 (10th Cir. 2007) (*sua sponte* dismissal for failure to comply with Court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing actions without prejudice for failure to comply).

#### **RECOMMENDATION**

Based on the foregoing findings, it is recommended that this action be **DISMISSED without prejudice** for Petitioner's failure to comply with this Court's Order. Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **November 5, 2021**, in accordance with 28 U.S.C. § 636 and Federal Rules of Civil Procedure 72. Petitioner is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation disposes of all issues referred to the undersigned magistrate judge in the captioned matter.

ENTERED on October 19, 2021.

  
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SHON T. ERWIN  
UNITED STATES MAGISTRATE JUDGE